

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
Civil Case No. 3:16-cv-00695-GCM

Baronius Press Ltd.,	)	
Plaintiff	)	
	)	
v.	)	<b>PLAINTIFF’S RESPONSE TO</b>
	)	<b>DEFENDANT’S FIRST MOTION</b>
	)	<b>FOR A PROTECTIVE ORDER</b>
Saint Benedict Press LLC,	)	
Defendant.	)	
	)	
	)	

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Plaintiff Baronius Press, Ltd. (“**Plaintiff**”) respectfully submits this Response in Opposition to Defendant’s First Motion for a Protective Order (Doc. No. 68) filed September 25, 2018 (“**Response**”).

1. The Pretrial Order and Case Management Plan (Doc. No. 20, p. 3) defines that “privileged documents inadvertently produced may be ‘clawed back’ by the party that produced them within 14 days of being served with written notice of the inadvertent disclosure by the party who received the document”.

2. Defendant produced documents SBPP-00650 to SBPP-01379 a re-typeset draft of the book *Fundamentals of Catholic Dogma* (“*Fundamentals*”) on November 24, 2017. Defendant **knew** about its alleged “inadvertent release” since at least May 10, 2018 and it only made a request on June 26, 2018 for the documents to be designated as “Attorneys’ Eyes Only”. (Doc. No. 47-3) and waited until September 25, 2018, *i.e.* ten (10) months after the initial release of the documents to file for a Motion for a Protective Order (Doc. No. 68). *See also Victor Stanley, Inc. v. Creative Pipe, Inc.*, 250 F.R.D. 251, 258 (D.Md. 2008) (holding that there is a

waiver of a privilege and its protection with “inadvertent production [of attorney-client work product] ‘because once disclosed, there can no longer be any expectation of confidentiality.’”)

3. Plaintiff has conducted reviews of the re-typeset draft of *Fundamentals* (SBPP-00650 to SBPP -1379).

4. Defendant’s claim that the re-typeset draft of *Fundamentals* (SBPP-00650 to SBPP -1379) is confidential and proprietary business information is without merit. (Doc. 73, Pages 4-7)

5. Defendant’s re-typeset draft of *Fundamentals* (SBPP-00650 to SBPP -1379) is an unauthorized derivative work in this willful copyright infringement lawsuit.

6. There should be no restrictions in presenting the re-typeset draft of *Fundamentals* (SBPP-00650 to SBPP -1379) into evidence as it shows Defendant’s willful infringement and its intention to continue to infringe Plaintiff’s copyrights.

7. For the foregoing reasons Defendant’s First Motion for a Protective Order should be DENIED.

Respectfully submitted this 8<sup>th</sup> day of October, 2018.

*Attorneys for Plaintiff*

/s/ Mark W. Ishman

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## CERTIFICATE OF SERVICE

I, the undersigned attorney do hereby certify that I have served all parties in this action with a copy of this RESPONSE IN OPPOSITION TO DEFENDANT’S FIRST MOTION FOR A PROTECTIVE ORDER by electronically filing the same *via Pacer* and forwarding to the email addresses listed below:

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This the 8<sup>th</sup> day of October, 2018.

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